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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,203	06/09/2005	Thomas Juestel	DE 020311	1821

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS  
P.O. BOX 3001  
BRIARCLIFF MANOR, NY 10510

EXAMINER
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WIESE, NOAH S

ART UNIT	PAPER NUMBER
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1793

MAIL DATE	DELIVERY MODE
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07/29/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/538,203	<b>Applicant(s)</b> JUESTEL ET AL.	
	<b>Examiner</b> NOAH S. WIESE	<b>Art Unit</b> 1793	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 May 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 and 15-18 is/are pending in the application.
- 4a) Of the above claim(s) 4 and 6 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-3, 5, 7, 8, 11-13 and 15-18 is/are allowed.
- 6) ☒ Claim(s) 9 and 10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Status of Application***

1. Acknowledgement is made of amendments filed 05/20/2008. Upon entering the amendments, the claims 1-3, 5, 7, 9-10, and 12 are amended and claim 14 is cancelled.
2. The claims 1-13 and 15-18 are pending and presented for the examination.

***Objections Withdrawn***

3. Claim 10 has been amended to overcome the objection set forth in the previous office action. Claim 14 has been cancelled. Therefore, the objections to the claims have been withdrawn.

***Applicant's Arguments***

4. Applicant's arguments filed 05/20/2008 have been fully considered and, along with the amendments to the independent claim 1, are persuasive at overcoming the rejections of claims 1-3, 5-8, 12-13, and 15-18. The amendments to the claims remove Sr and Al as possible elements in the EA and B positions, respectively. This makes the claims patentably distinct over the teachings of Ellens et al as applied in the previous office action. Further, applicant's arguments regarding the replacement of the Sr element with Mg found in other, similar phosphors are convincing at showing the patentability of independent claim 13 over the combined teachings of Ellens et al. Finally, applicant's arguments regarding the modification of Ellens et al in view of Yamada in order to use Ga or In in the "B" position are persuasive at showing that it would not have been obvious to one of ordinary skill to make said modification.

As Ellens et al was the closest prior art to the claimed phosphor composition, the amendments making the claims distinct over Ellens also make the claims allowable.

### ***Previous Art Rejections***

5. Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellens et al (US 2003/0094893).

Regarding **claim 9**, the formula taught by Ellens et al can also meet the limitations of the phosphor of the claim. The x and b variables of the claim can be equal to zero. When these two variables are equal to zero, and when the “a” variable is equal to 1, the phosphor formula taught by Ellens et al would meet the limitations of the formula of claim 9, rendering the claim patentably indistinct over the prior art of record.

Regarding **claim 10**, in similar fashion to claim 9 above, the phosphor formula taught by Ellens et al can meet the limitations of the formula of claim 10 if the x and y variables are equal to zero.

### ***Allowable Subject Matter***

6. Claims 1-3, 5, 7-8, 11-13, and 15-18 are allowed. As discussed above, the claims have been amended to be patentably distinct from Ellens et al, which is the closest prior art. Further, applicant's arguments regarding the modification of Ellens in view of Yamada are persuasive at showing that it would not have been obvious to one of ordinary skill to replace the Al element in the Ellens composition with Ga or In. Therefore, the claims are patentably distinct over the prior art of record.

### ***Conclusion***

7. Claims 9-10 are rejected and 1-3, 5, 7-8, 11-13, and 15-18 are allowed.
8. Claims 9 and 10 are rejected under the grounds issued in the previous rejection.

Therefore, **THIS ACTION IS MADE FINAL.**

9. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NOAH S. WIESE whose telephone number is (571)270-3596. The examiner can normally be reached on Monday-Friday, 7:30am-5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jerry A Lorengo/  
Supervisory Patent Examiner, Art Unit 1793

Noah Wiese  
July 28<sup>th</sup>, 2008  
AU 1793